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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 ANTHONY CROSS,

Case No. 3:13-cv-00433-MMD-WGC

10 Plaintiff,

ORDER

11 v.

12 RON JAEGER, et al.,

13 Defendant.

14 **I. SUMMARY**

15 Following summary judgment proceedings, the Court entered an Order referring
16 this case to United States Magistrate Judge Valerie P. Cooke to conduct a settlement
17 conference pursuant to LR 16-5 ("Referral Order"). (ECF No. 335.) Judge Cooke held a
18 settlement conference on January 23, 2017. (ECF No. 382.) Judge Cooke found that
19 Plaintiff's conduct during the settlement conference compelled her to certify to this Court
20 a finding of civil contempt against Plaintiff pursuant to 28 U.S.C. § 636(e)(6). (*Id.*) Before
21 Judge Cooke issued any certification, Plaintiff filed an objection to Judge Cooke's
22 determination to certify. (ECF No. 384.) Judge Cooke subsequently deemed certification
23 to be moot because of the impracticality of civil contempt (given Plaintiff's indigent status).
24 (ECF No. 392.) As an alternative, Judge Cooke determined it would be proper to proceed
25 pursuant to the Court's authority under Fed. R. Civ. P. 41(b) and Local Rule IA 11-8. (*Id.*)
26 Judge Cooke thus issued an order to show cause and set a show cause hearing. (*Id.*; ECF
27 No. 395.) Plaintiff filed an objection to the show cause order and hearing (ECF No. 400)
28 and refused to appear for the show cause hearing. (ECF No. 401.)

1 This Order addresses Plaintiff's objections to Judge Cooke's decision to certify
2 facts to the district court judge for an entry of civil contempt (ECF No. 384) and her decision
3 to order Plaintiff to show cause (ECF No. 400).

4 **1. ECF No. 384**

5 As noted, Plaintiff filed an objection to Judge Cooke's determination to certify to this
6 Court a finding of civil contempt against Plaintiff. (ECF No 384.) However, Judge Cooke
7 did not proceed with certification and instead issued an order to show cause pursuant to
8 the Court's authority under Fed. R. Civ. P. 41(b) and LR IA 11-8. (ECF No. 392.) Plaintiff
9 thus prematurely objected to an anticipated certification order that was not issued.
10 Because Judge Cooke ultimately decided against certification, Plaintiff's objection (ECF
11 No 384) is overruled as moot. Plaintiff's motion to file a reply in support of his objection
12 (ECF No. 389) is denied.¹ The Clerk is directed to strike Plaintiff's proposed reply brief
13 (ECF No. 394-1).

14 **2. ECF No. 400**

15 In Plaintiff's objection to Judge Cooke's orders setting a show cause hearing,
16 Plaintiff challenges both Judge Cooke's authority to order a hearing as well as her stated
17 reason for setting the hearing. First, Plaintiff argues that Judge Cooke lacks authority to
18 hold a hearing to address civil contempt. Plaintiff is correct that pursuant to 28 U.S.C. §
19 636(e)(6), a magistrate judge must certify facts to the district court judge to hold a hearing
20 to determine civil contempt. However, Judge Cooke has not issued any such certification
21 to initiate section 636(e)'s civil contempt process. As Judge Cooke explained, she decided
22 that civil contempt would be impractical here. (ECF No. 392.)

23 Second, Plaintiff contends that his objection to Judge Cooke's initial decision to
24 recommend certification renders her order ineffective pending the Court's disposition of
25 his objection. (ECF No. 400 at 2.) Plaintiff is wrong. An objection to a magistrate judge's

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27 ¹LR IB 3-2(a) provides for a reply in support of an objection to the Magistrate
28 Judge's order to be filed only with leave of the court. The Court finds that a reply is not
necessary here even if Plaintiff's objection was not premature.

1 order does not stay the effect of the order; rather, a party would have to move to stay the
2 order. Moreover, Judge Cooke indicated that she intended to certify facts to the district
3 court judge pursuant to 28 U.S.C. § 636(e)(6)). Ultimately, however, Judge Cooke decided
4 to hold a show cause hearing pursuant to this Court's authority under Fed. R. Civ. P. 41(b)
5 and Local Rule IA 11-8. (ECF No. 392.) Plaintiff's premature objection to an anticipated
6 certification order would not preclude Judge Cooke from proceeding with a show cause
7 hearing.

8 Third, to the extent Plaintiff contends that he has a right to refuse to speak to Judge
9 Cooke during the settlement conference under the First Amendment, Plaintiff is again
10 wrong.² The First Amendment does not apply in this context. Because Plaintiff was
11 ordered to participate in a settlement conference and to appear for a show cause hearing,
12 his failure to participate is not protected by the First Amendment. *See In re Grand Jury*
13 *Proceedings*, 13 F.3d 1293, 1295 (9th Cir. 1994) (finding that 28 U.S.C. § 1826 allows a
14 court to hold a witness in civil contempt where he refuses without just cause to comply
15 with an order of the court to testify). Moreover, this Court ordered Plaintiff to participate in
16 settlement conference when it referred the case to Judge Cooke. While Plaintiff may agree
17 not to settle, he still must exhibit respect for the proceedings and the authority of the
18 magistrate judge. It is the magistrate judge who determines when a settlement conference
19 "is over" and when to discharge the parties; Plaintiff does not have that authority.

20 Finally, to the extent that Plaintiff challenges Judge Cooke's authority to proceed
21 with a show cause hearing, his objection is without merit. As the presiding judge, this Court
22 has inherent authority under Fed. R. Civ. P. 41(b) and Local Rule IA 11-8 to impose
23 dismissal as a sanction for violating the Court's order. The Court also has inherent
24 authority to enforce its orders. *See U.S. v. W.R. Grace*, 526 F.3d 499, 509 (9th Cir. 2008)
25 ("[a]ll federal courts are vested with inherent powers enabling them to manage their cases
26 and courtrooms effectively and to ensure obedience to their orders") (internal quotation

27 ²Plaintiff launches other personal attacks on Judge Cooke, as he did with Judge
28 Cobb, which the Court will not dignify with a response.

1 marks and citation omitted). The Court's Referral Order extends this inherent authority to
2 ensure that the parties meaningfully participate in the settlement conference. Thus, Judge
3 Cooke acted within the scope of the authority conferred under the Referral Order to issue
4 an order to show cause to Plaintiff for failing to participate in the settlement conference in
5 good faith.

6 Plaintiff's objection to Judge Cooke's orders to show cause (ECF No. 400) is
7 overruled.

8 **3. Show Cause Order**

9 Plaintiff failed to appear at the May 8, 2017, show cause hearing. (ECF No. 401.)
10 Plaintiff is ordered to show cause as to why this Court should not impose sanctions,
11 including and up to dismissal of this case under Fed. R. Civ. P. 41(b), for Plaintiff's violation
12 of Judge Cooke's order to show cause. The Court will issue a separate order setting the
13 show cause hearing. Plaintiff may respond to this order within twenty (20) days. Defendant
14 has ten (10) days to respond. No reply will be permitted.

15 DATED THIS 22nd day of May 2017.

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19 MIRANDA M. DU
20 UNITED STATES DISTRICT JUDGE
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